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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,276	07/24/2003	Kevin L. Parsons	88319	9604
24628	7590	12/27/2004	EXAMINER	
WELSH & KATZ, LTD 120 S RIVERSIDE PLAZA 22ND FLOOR CHICAGO, IL 60606				WARD, JOHN A
		ART UNIT		PAPER NUMBER
		2875		

DATE MAILED: 12/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	10/626,276	Applicant(s)	PARSONS, KEVIN L.
Examiner	John A. Ward	Art Unit	2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 24 July 2003.  
2a) This action is FINAL.                    2b) This action is non-final.  
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) Claim(s) \_\_\_\_\_ is/are allowed.  
6) Claim(s) 1-22 is/are rejected.  
7) Claim(s) \_\_\_\_\_ is/are objected to.  
8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.  
10) The drawing(s) filed on 22 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
    1. Certified copies of the priority documents have been received.  
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date 72003.

4) Interview Summary (PTO-413)  
    Paper No(s)/Mail Date \_\_\_\_\_.  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings submitted are informal because the quality of the lines, the labeling of the elements are hard to follow. Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 19 is rejected under 35 U.S.C. 102(e) as being anticipated by Chun (US 6,793,366).

Regarding claim 19, Chun discloses a waterproof low power L.E.D. flashlight having a first body portion 17 a second body portion 18 having a forward end, a rearward end and each portion having a sealing edge that will allow mating between

each portion along with a sealing edge 35 that allows a waterproof (column 2, lines 27-40). A loop portion 20, located at the rear end of the bodies portions for attachment to a key ring and a protuberance (figure 8) to accommodate a light source 65.

Claim 20 is rejected under 35 U.S.C. 102(e) as being anticipated by Chun ('366).

Regarding claim 20, Chun discloses a waterproof low power L.E.D. flashlight having a first body portion 17 a second body portion 18 having a forward end, a rearward end and each portion having a sealing edge that will allow mating between each portion along with a sealing edge 35 that allows a waterproof (column 2, lines 27-40) in addition to a switch 40 that is also sealed. A loop portion 20, located at the rear end of the bodies portions for attachment to a key ring, and a protuberance (figure 8) to accommodate a light source 65.

Claim 21 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Chun ('366).

Regarding claims 21 and 22, Chun discloses a waterproof low power L.E.D. flashlight having a first body portion 17 a second body portion 18 having a forward end, a rearward end and each portion having a sealing edge that will allow mating between each portion along with a sealing edge 35 that allows a waterproof (column 2, lines 27-40) in addition to a switch 40 that is also sealed. A loop portion 20, located at the rear end of the bodies portions for attachment to a key ring, and a protuberance (figure 8) to accommodate a light source 65.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu et al (US 6,299,323) in view of Chun (US 6,793,366).

Regarding claim 1, Yu et al. ('913) discloses a miniature led flashlight having a first body 10 having a forward end and rearward end, a second body 20 having a forward end and rearward end, a loop 30 for attachment of to a support 32.

Regarding claim 2, Yu et al. in figure 2 shows that the first and second bodies are triangularly shaped.

Regarding claim 3, Yu et al. shows in figure 2 that the first and second body include a protuberance (not labeled) to accommodate a light source 14.

Regarding claim 5, Yu et al. shows a switch 26 located at an opening of the body 24 to permit activate the switch.

Regarding claim 8, Yu et al. shows in figure 2 that the opening of the body 24 is circular in shape.

Regarding claims 9 and 10, Yu et al. teaches that the body of the flashlight is made of high impact plastic material (column 2, lines 25-33).

Regarding claim 13, Yu et al. shows mounting clips 72 and 74 in figure 2.

Regarding claim 14, Yu et al. shows in figure 2 the clips are generally U-shaped.

Regarding claim 16, Yu et al. teaches that the bodies are decorative (column 2, lines 31-33).

Regarding claim 18, Yu et al. teaches in column 3, lines 23-40 that a 79 is to facilitate separating the body portions.

Regarding claims 1, 4, 6, 7, 11, 12, 15 and 17 Yu et al. does not teach that the body is water proof or have a water proof seal.

Regarding claims 1, 4, 6 and 7 Chun ('366) discloses a watertight low power L.E.D. flashlight having a first and second body 17, 18 each body having a front end and rear end (figure 2), a switch 40, a loop portion 20 and a gasket 35 that when the first and second body is placed together provides a water tight seal around the body and switch (column 2, lines 48-54).

Regarding claims 11, 12 and 15 Chun teaches that the bodies are made of a transparent or colored material (column 2, lines 27-40).

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Regarding claim 17 Chun teaches that a clip 36 can be used to attach to an article of clothing (column 2, lines 39-40).

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine flashlight of Yu et al. with the water proof flashlight of Chun in order to provide a portable flashlight being powered by a battery and illuminating by a light emitting diode that is light weight and water proof as taught by Chun (column 1, lines 30-40).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ellenberger (US 3,601,601) is a waterproof flashlight, Chamberlain (US 4,342, 071) is a under water lighting, Huang is a flashlight having a first and second body portion, Vandenbelt et al (US 5,463, 539) shows a flashlight having a first and second body portion, Peterson (US 5,469,345) and Sheps (US 5,720,543) each having a flashlight that also haves a first and second body portion and Leake et al. PCT/US 94/12491 shows a flashlight having a clear housing.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John A. Ward whose telephone number is 571-272-2386. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571-272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JAW  
December 20, 2004



JOHN ANTHONY WARD  
PRIMARY EXAMINER